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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/868,871	06/05/2001	Jan Malik	153-5916/PCT	5113

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CIBA SPECIALTY CHEMICALS CORPORATION
PATENT DEPARTMENT
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EXAMINER

YOON, TAE H

ART UNIT	PAPER NUMBER
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1714

MAIL DATE	DELIVERY MODE
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08/01/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/868,871

Applicant(s)

MALIK ET AL.

Examiner

Tae H. Yoon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7,9,12,13,15 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7,9,12,13,15 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recited "A polymer article according to claim 1 comprising a) ---" is confusing and indefinite absent recitation of the polyethylene of claim 1 since the instant claim language is same as "A polymer article comprising a mixture of the recited stabilizers" but the claim is dependent on claim 1.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3903218 in view of Keller et al (US 5,574,082), JP 62-158737 and Fukui et al (US 5,100,930), and further in view of Laermer et al (US 5,308,549).

The rejection is maintained for reason of record with following response.

Applicant asserts that the unexpected result in the second 1.132 Declaration overcame the rejection, but the examiner disagrees with it.

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1. DE teaches polyethylene at page 2, line 66 and said polyethylene encompasses the instant polyethylene such as high density or low density polyethylene since choice is very limited. See col. 2, lines 53-57 of Laermer et al, and use of such polyethylene in DE thereof would be a *prima facie* obviousness.
2. Again, **claims do not require repeated extrusion processes** shown in said second 1.132 Declaration, and thus one extrusion process of a composition would be sufficient.
3. Comparison of the data (MFI) for the first extrusion pass shows almost same value for the instant samples 3 and 4 and comparative samples 1 and 2 in said second 1.132 Declaration. With respect to YI values, the absolute change of the YI value is almost same, sample 1 (2.45), sample 2 (2.80), sample 3 (2.58) and sample 4 (2.65). The examiner does not see any unexpected result contrary to applicant's assertion.
4. Example 1 of DE shows employing a mixture of a hindered tetrakis-phenol and three phosphorus-containing antioxidants in a ratio of 1:1, and thus use of said mixture with α -tocopherol with a ratio of 10:1 for a hindered tetrakis-phenol and α -tocopherol would be obvious modification to one skilled in the art.

Claims 1-7, 9, 12, 13, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3903218 in view of Keller et al (US 5,574,082), JP 62-158737 and Fukui et al (US 5,100,930), and further in view of Tamura et al (US 6,096,814) and Laermer et al (US 5,308,549).

The rejection is maintained for reason of record with above response.


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Applicant failed to show any unexpected results of the recited amounts in a masterbatch since a polymeric masterbatch containing a higher amount of additive is a routine practice in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tae H. Yoon whose telephone number is (571) 272-1128. The examiner can normally be reached on Mon-Thu.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Tae H Yoon
Primary Examiner
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THY/July 30, 2007